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Webb v. Quantum Resources, Inc., 93-ERA42A (Sec'y June 29, 1994)

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DATE: June 29, 1994
CASE NO. 93-ERA-42A

IN THE MATTER OF

CHARLES A. WEBB

COMPLAINANT,

v.

QUANTUM RESOURCES, INC.

RESPONDENT.

BEFORE: THE SECRETARY OF LABOR

ORDER

The parties in this case arising under the employee protection provision of the Energy Reorganization Act of 1974, as amended (ERA), 42 U.S.C. § 5851 (1988), entered into a settlement and Complainant filed with the Administrative Law Judge (ALJ) a Notice of Withdrawal with Prejudice of Respondent Quantum Resources, Inc. [1] (Complainant's Notice) Complainant's Notice stated that the parties had agreed to keep the terms of the settlement and the settlement agreement confidential and submitted a copy of the agreement to the ALJ for in camera review. In addition, Complainant's Notice requested, on behalf of Respondent as well as Complainant, that the settlement agreement be maintained in a restricted access portion of the record.

The ALJ submitted a Recommended Decision and Order Rejecting Release and Settlement Agreement (R. D. and O.). He noted that he had "no reason to believe that the agreement is not fair, adequate or reasonable," R. D. and O. at 2, but recommended rejecting the agreement because it contained the above confidentiality provision which he interpreted as being in conflict with previous Secretary's decisions. Under Macktal v. Secretary of Labor, 923 F.2d 1150 (5th Cir. 1991), the Secretary

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may only approve a settlement as written or reject it.

I agree with the ALJ that it is settled law that the Freedom

of Information Act applies to case records in ERA cases, but I do not agree that the confidentiality provision of this settlement agreement, paragraph 7, conflicts with prior decisions of the Secretary. Paragraph 7 provides "[t]he parties agree that the settlement . . . is to remain confidential and neither party shall make any reference to the case . . . the Release and Settlement Agreement . . . or the contents of this Agreement to anyone except the attorneys and accountants advising the parties." Paragraph 7 does not purport to bind the Secretary to maintain the confidentiality of the agreement, nor does it provide that if the Secretary denies the request to restrict access to the settlement the agreement is void or voidable. In contrast, the settlement itself in DeBose v. Carolina Power & Light Co., Case No. 92-ERA-14, Sec'y. Dec. Feb. 7, 1994, slip op. at 2, provided that the settlement must be placed in a restricted access portion of the record and that refusal of the Secretary to grant the parties' request for confidentiality made the agreement voidable. Id. at 4. For the reasons discussed in DeBose and the cases cited therein, id. at 2-4, the parties' request to restrict access to the settlement is DENIED.

Paragraph 10 of the settlement appears to cover matters other the ERA. For the reasons set forth in Poulos v. Ambassador Fuel Oil Co., Case No. 86-CAA-1, Sec. Order, November 2, 1987, slip op. at 2, I have limited my review of the Settlement Agreement to determining whether its terms are a fair, adequate and reasonable settlement of Complainant's allegations that Respondent violated the ERA. The Settlement Agreement has been reviewed and I agree with the ALJ that its terms are a fair, adequate and reasonable settlement of Complainant's claims against Respondent under the ERA. Accordingly, I approve the settlement and the complaint in this case is DISMISSED with prejudice.

SO ORDERED.

ROBERT B. REICH
Secretary of Labor

Washington, D.C.

[ENDNOTES]

[1] Complainant originally filed a complaint against Quantum Resources and Carolina Power & Light Co. The ALJ severed that case into two cases, one of which is this case, by order of October 15, 1993.